

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Revision of Part 22 and Part 90)
Commission's Rules to Facilitate)
Development of Paging Systems)
)
Implementation of Section 309(j))
of the Communications Act --)
Competitive Bidding)

WT Docket No. 96-18

PP Docket No. 93-253

To: The Commission

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**REPLY COMMENTS OF
PREFERRED NETWORKS, INC.**

Preferred Networks, Inc. ("PNI"), pursuant to Section 1.415 of the rules and regulations of the Federal Communications Commission ("FCC" or "Commission") and by counsel, respectfully submits its replies to the comments filed in response to the interim licensing procedure proposed by the Commission in the Notice of Proposed Rule Making adopted February 8, 1996 in the above-styled proceeding ("Notice").¹

The comments received by the Commission in connection with its interim licensing procedures are consistent in the opposition to the suspension of acceptance of applications for paging frequencies. All parties urge the Commission to rescind the "freeze," or at a minimum provide "real" relief to the "freeze" for incumbent paging licensees. The majority of commenters focus on the adverse affects which such "freeze" has on paging companies which

¹ Notice of Proposed Rule Making (FCC 96-52), WT Docket No. 96-18, PP Docket No. 93-253, 10 FCC Rcd __ (1996).

operate on the exclusive frequencies in the 931 MHz and 929 MHz bands. PNI echoes the protests of these parties and emphasizes that the Commission's actions has a more adverse impact on those companies operating on the shared VHF/UHF PCP frequencies because the "freeze" is far more comprehensive than that imposed on all other paging frequencies, especially those licensed on an exclusive basis. Accordingly, PNI again requests that the Commission take **immediate** action to rescind the suspension of acceptance of applications particularly for the non-exclusive UHF/VHF PCP channels.

PNI also concurs with those parties which argue that the transition of paging channels to geographic licensing is far different than the Commission's proposal for transition to geographic licensing in the 38 GHz and 800 MHz SMR services which caused the Commission to impose an application "freeze" in these services. In the 800 MHz SMR services, the Commission found that the reallocation of spectrum was required to facilitate advanced technologies to implement wide-area SMR systems. Moreover, the Commission mandated that persons obtaining the newly-created wide-area licenses could require incumbents be relocated to other 800 MHz spectrum. The 38 GHz spectrum did not have a number of incumbents, but the Commission's action in the Emerging Technologies proceeding² encouraged licensing speculation in this band. In the paging proceeding, the Commission is not clearing spectrum for

² See First Report and Order and Third Notice of Proposed Rule Making (FCC 92-437), ET Docket No. 92-9. 7 FCC Rcd 6886, ¶ 30-31 (1992).

advanced technologies nor will incumbent licensees be relocated. Additionally, unlike the 800 MHz SMR service and the 38 GHz service, at least in the 931 MHz band, a competitive bidding process is in place when one or more parties seek to license the same spectrum in the same place. Thus, the reasoning for imposition of an application "freeze" in the other wireless telecommunications services is not applicable in the instant proceeding.

Further, PNI believes that the Commission's action will increase the speculation in the paging bands as opposed to discouraging such speculation. The imposition of the "freeze" will provide basis for the "application mill" type businesses to portray that this spectrum has intrinsic value and ready buyers. On balance, the Commission's action will have far greater adverse affect on the public interest as it will reduce the service available to the public with an increase of cost of the service in the short-term and long term.

Additionally, the action provides the emerging PCS services a competitive edge to the paging services. The Commission could not have intended to regulatorily suppress competition between PCS and paging when it has found that these are similar services which compete against each other.³ The Commission's asserted purposes in implementing the Budget Act⁴ was to

³ See Implementation of Sections 3(n) and 332 of the Communications Act, Third Report and Order, GN Docket No. 93-2525, 9 FCC Rcd 7988 (1994).

⁴ See Omnibus Budget Reconciliation Act of 1993, Publ L. No. 103-66, Title VI § 6002(b)(2)(A), (B), 107 Stat. 312 (largely codified at 47 U.S.C. § 332 *et seq.*) ("Budget Act").

stimulate competition and not provide one wireless telecommunications service a regulatory advantage over other similar services. The Commission's action, therefore, are contrary and adverse to the public interest.

Finally, PNI reiterates its concern that the transition to exclusive, geographic based licensing on the shared UHF/VHF PCP channels will be complex, difficult, and time consuming. Nevertheless, PNI believes that such licensing method is achievable and supports the Commission's consideration of such a licensing method. However, if achieving exclusive, geographic based licenses in these bands will require small and medium-sized companies to be placed at a competitive disadvantage to larger companies which have the ability to continue limited expansion of their systems, the cost of successful transition to exclusive licensing is more than the benefits to be achieved.

PNI believes that the shared environment of the non-exclusive PCP channels and the one-year construction requirement for stations, should be sufficient deterrents to an increase in the number of applications for such channels if the Commission rescinds the application "freeze" for these channels. However, as PNI urged in its comments, should the Commission be concerned that applications mills might begin campaigns to license facilities on the non-exclusive PCP channels based on a possibility of exclusivity, the Commission could implement a licensing procedure similar to its procedures adopted in the

Emerging Technology rule making.⁵ Existing licensees would be permitted to file applications to expand or modify their existing systems. Each applicant would be required to provide a showing that the facilities sought are an expansion of the system or a modification of an existing site. Such applications would be processed and granted on a primary basis. New applicants which were not previously licensed on the non-exclusive PCP channel being requested, may submit applications. However, such applications would be granted on a secondary basis, subject to the outcome of the instant proceeding. In this manner, the current licensees are not disadvantaged in continuing expansion of their business and the Commission can ensure that additional spectrum is not licensed for purely speculative purposes.

⁵ See First Report and Order and Third Notice of Proposed Rule Making, n. 2; Public Notice (Mimeo No. 23115), 2 GHz Licensing Statement (May 14, 1992).

Preferred Networks, Inc., therefore, respectfully requests that the Commission immediately rescind the suspension of acceptance of applications for non-exclusive PCP channels.

Respectfully submitted,

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